

ARIZONA DEPARTMENT OF WATER RESOURCES
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Janet Napolitano
Governor

Herbert R. Guenther
Director

February 27, 2006

Interested Parties

RE: The Arizona Department of Water Resource's (Department) response to public comments regarding the revised CAP Municipal and Industrial (M&I) Subcontract Entitlement Transfer Policy (CAP Transfer Policy)

Dear Interested Party:

For those parties that participated during the notification process, thank you for taking the time to review and comment on the Department's clarification of its 1996 CAP M&I Transfer Policy. Enclosed is a brief overview of the Transfer Policy followed by the Department's response to the public comments from the November 10, 2005 public meeting, and those comments that were later submitted to the Department in writing, and a copy of the final Transfer Policy. Several common issues were identified in the comments from interested and potentially affected parties, which were carefully reviewed and analyzed by legal and technical staff. The Department has summarized the content of those common issues and has provided a response to each of them in the attached document. The Department made minor changes to the policy as described in the response document and the enclosed Transfer Policy.

The Department has adopted the revised CAP Transfer Policy effective February 27, 2006. The Transfer Policy will be posted to the Department website at www.azwater.gov. If you have any questions regarding the policy or the Department's response to public comments please contact Perri Benemelis at (602) 771-8404.

Sincerely,

A handwritten signature in cursive script that reads "Herbert R. Guenther".

Herbert R. Guenther
Director

**ARIZONA DEPARTMENT OF WATER RESOURCES' RESPONSE
TO PUBLIC COMMENTS REGARDING THE REVISED
CENTRAL ARIZONA PROJECT MUNICIPAL AND INDUSTRIAL ENTITLEMENT TRANSFER
POLICY**

February 27, 2006

The Arizona Department of Water Resources (Department) is proposing revisions to its 1996 policy regarding transfers of Central Arizona Project (CAP) municipal and industrial (M&I) subcontract entitlements (1996 CAP M&I Transfer Policy). This paper responds to comments received by the Department as part of a public process concerning the proposed revisions.

The 1996 CAP M&I Transfer Policy applies to transfers of CAP M&I subcontract entitlement water by non-Indian entities within the CAP service area. Since a transfer action may redistribute the State's water supply, the State has an interest in assuring that the transfer is consistent with the intent of the original allocation of CAP water to reduce or eliminate groundwater overdraft thereby ensuring the availability of water for future growth and development planned by counties, cities and towns in central Arizona.

In order to receive an initial allocation of CAP water for M&I use, M&I providers entered into subcontracts with the Central Arizona Water Conservation District (CAWCD) and the United States Secretary of the Interior (Secretary). Under the terms of these subcontracts, if a subcontractor plans to transfer its CAP subcontract entitlement, the subcontractor must obtain the prior written approval of both the CAWCD and the Secretary. State law also requires the subcontractor to consult with, and obtain the advice of, the Director of the Department for a proposed transfer of a CAP subcontract entitlement. After review, the Director makes a recommendation to the Secretary regarding the proposed subcontract transfer. The transfer policy addresses the process for complying with State law when an M&I subcontractor proposes to transfer its CAP subcontract entitlement.

The 1996 CAP M&I Transfer Policy describes how each proposed transfer must be consistent with applicable Water Management Objectives and Review Criteria. If there are competing requests for a CAP allocation that meet the Water Management Objectives and Review Criteria, the Department will then use the Decision Guidelines in the transfer policy to prioritize the competing requests and develop a recommendation. The 1996 CAP M&I Transfer Policy gives highest priority to transfers that keep CAP M&I water available in the area it was originally intended to serve.

The Department is proposing to revise the 1996 CAP M&I Transfer Policy for clarification purposes. On November 10, 2005, the Department conducted a public meeting and received comments on the proposed policy revisions, which was followed by written comments. Several of the public comments received by the Department were of similar content, and some of the comments supported the proposed revisions. For those comments that questioned the proposed revisions, the Department drafted a single response for each group of similar comments. Comments and their associated responses are provided below.

Comment 1. The policy clarification constitutes a substantive change that incorrectly states the intent of the original CAP allocation.

Response: The Department is revising the 1996 CAP M&I Transfer Policy to clarify the basis of its recommendations to the Secretary relative to transfers. The revision clarifies how the current policy has been interpreted and implemented by the Department when evaluating CAP M&I transfer actions and restates the intent of the original CAP allocation in language virtually identical to that which appears in the 1996 CAP M&I Transfer Policy.

At page 2, section B, the 1996 CAP M&I Transfer Policy states:

Any transfer of a CAP allocation may result in a redistribution of the State's water supply. Therefore, the State has an interest in assuring that the transfers are consistent with the intent of the original distribution of the CAP allocations. ***The intent of the original allocations was to reduce or eliminate groundwater overdraft, thereby ensuring the availability of water for the future growth and development planned by the counties, cities and towns in central Arizona.***

This language was quoted in the revised transfer policy at paragraph 9 for comparison purposes. At paragraph 8, the revised transfer policy uses virtually identical language and states:

Because the transfer of a CAP subcontract entitlement may result in a redistribution of the State's water supply, the State has an interest in assuring that transfers are consistent with the intent of the original allocation of CAP water, which was made by the Secretary upon recommendation of the Director. ***The intent of the original allocations was to reduce or eliminate groundwater overdraft, thereby ensuring the availability of water for the future growth and development planned by counties, cities and towns in central Arizona.***

In the proposed revisions to the transfer policy, the Department's statement regarding the intent of the original CAP allocations remains unchanged from the 1996 CAP M&I Transfer Policy. As reflected in the Water Management Objectives, Review Criteria and Decision Guidelines of both the 1996 and proposed transfer policies, the reduction or elimination of groundwater overdraft through a CAP allocation is one of the tools that ensures that water will be available for future M&I growth and development. For clarification, the Department added language to Section III.H.

In addition, the reduction or elimination of groundwater overdraft promotes the management goals of the AMAs within the CAWCD service area. This is one of the Water Management Objectives under both the existing and the revised transfer policies. See paragraphs 20, 37, and 38 of the revised transfer policy, which includes language from the existing policy. For clarification, the Department moved the statutory citation to Section II and added language to Section III.H. of the revised policy.

Comment 2. The original CAP M&I allocations were only meant to support future growth, and were only intended to offset agricultural groundwater pumping not M&I groundwater pumping as stated in the policy.

Response: The calculation that the Department used to develop the original M&I recommendations in 1982 included a CAP water allocation to replace existing groundwater

demand plus a per capita allocation to support future growth. Specifically, the original M&I allocation recommendation offset existing groundwater use within a provider's service area and created a new water supply for future development. For elevations below 3,000 feet, the estimated 2034 population for each service area (the existing groundwater using population plus the projected population) was multiplied by a per capita rate of 180 gpcd. These "base need" values were then reduced by 21% to constrain the total M&I allocation to 640,000 acre-feet, which was the amount available for allocation.

Comment 3. By revising the policy, ADWR is changing the "transfer rules" mid-process.

Response: The Department received comments concerning the pending Flowing Wells Irrigation District transfer action that highlighted a lack of clarity in some sections of the current policy. The proposed revisions clarify how the Department interprets the current policy, and provide greater transparency for future transfer action determinations. Similar to past transfer actions, the Director's recommendation for the pending transfer action will include an analysis of how the Department determines priorities.

Comment 4: Assured Water Supply (AWS) program considerations cannot be "divorced" from the existing CAP M&I Transfer Policy. Therefore, references in the proposed transfer policy to the AWS program should not be deleted.

Response: The Department recognizes that there is a relationship between the CAP M&I Transfer Policy and the AWS Rules. The revised transfer policy still recognizes that the Department must consider existing and future water demands. These considerations are embodied in the Water Management Objectives, the Review Criteria and the Decision Guidelines. In the revised transfer policy the Department chose to remove specific references to the AWS program in favor of broader language that is consistent with the State's well-established water policy objectives. The AWS provisions directly support those same objectives, and the language change in no way reflects a diminishment in the importance of the AWS program. The Department believes the broader language is better suited to the purpose of the policy, which is to make recommendations to the Secretary regarding the allocation of the State's CAP water supplies.

Furthermore, in reviewing the policy, the Department concluded that, in some instances, the use of AWS terms-of-art contributed to lack of clarity. The Department revised the policy to make it clear that when the Department analyzes a proposed transfer, the Department applies the criteria listed in the CAP M&I Transfer Policy rather than AWS criteria and analysis methodology.

Comment 5: The revised policy would grant the Central Arizona Groundwater Replenishment District (CAGRDR) a preferential priority.

Response: Under the Decision Guidelines in the revised policy, the priorities and qualification requirements associated with the CAGRDR are unchanged. Under both the existing policy and the revised policy, the CAGRDR may qualify for second, fourth and the seventh (last) priority. The CAGRDR may qualify under the second priority if the CAP water will be used to replenish groundwater within the area of impact of groundwater withdrawals of the transferring entity. The Department's hydrology division conducts the technical analysis to determine if replenishment is within the area of impact of groundwater withdrawals. The CAGRDR may also qualify under the fourth priority in order to satisfy an existing replenishment obligation associated with the transferring entity or member lands within the transferring entity's service area by replenishing groundwater outside of the area of impact of the transferring entity's groundwater withdrawals. If

the CAGR D intends to acquire an allocation for future replenishment obligations in the year 2035, then the CAGR D qualifies for the seventh and the lowest priority.

In addition, replenishment is not preferred over direct use. Fourth priority will be recommended to an entity outside the transferring entity's CAP subcontract service area that will directly use the CAP water in the near term to meet its existing groundwater demands, or to the CAGR D under the conditions stated above.

Comment 6: The revised policy grants CAGR D members preferential priority over designated water providers.

Response: The Department evaluates proposed transfers based on the Water Management Objectives, Review Criteria and Decision Guidelines set forth in the CAP M&I Transfer Policy. CAGR D membership per se is not a consideration. For water providers, the Policy first gives preference to entities that will continue to keep a CAP allocation available to the area it was originally intended to serve. If that is not proposed, the policy next considers a water provider that demonstrates that groundwater withdrawals by the transferring entity, that are a result of the CAP transfer, will adversely impact its ability to meet its demands. Next, the CAP Transfer Policy generally favors water providers within the same AMA that can demonstrate that the CAP water entitlement will be directly used to reduce its current reliance on groundwater supplies in the near term. Finally, M&I water providers within the same AMA that demonstrate the need for additional CAP water to meet future demands prior to the year 2035 and in the year 2035, respectively, are considered.

Comment 7: The CAGR D and its member service areas and member lands should not qualify for a CAP subcontract entitlement because the Director's approval of the CAGR D Plan of Operation "guarantees the long-term availability of water supplies."

Response: The Director's approval of the current CAGR D Plan of Operation (Plan) does not determine whether the CAGR D or its member service areas or member lands qualify for a CAP subcontract entitlement under the Water Management Objectives, Review Criteria and Decision Guidelines of the CAP M&I Transfer Policy. Furthermore, the Director's approval of the Plan does not guarantee the long-term availability of water supplies for CAGR D member service areas and lands. A Plan must be submitted to the Department once every ten years for approval. In order for the Director to approve a Plan, the Plan must identify sufficient water supplies to meet the replenishment obligations for current members during the 20 years following the submission of the Plan. A Plan must also identify additional water supplies that are *potentially* available for the projected groundwater replenishment obligations of current and potential members for 100 years following the submission of the Plan. Approval of the Plan allows CAGR D members to comply with the consistency with management goal requirements in the Department's AWS Rules as long as the CAGR D remains in compliance with its replenishment obligations.

Comment 8: Designated M&I water providers can never qualify to receive CAP water supplies through a transfer action.

Response: In accordance with the eligibility requirements of the transfer policy, designated M&I water providers may qualify for any priority that is available to M&I water providers (see Response to Comment 6 above).

Comment 9: The “immediate need” argument was previously rejected when the Department was in the process of drafting the existing CAP Transfer Policy and it is contrary to the State’s Colorado River position that recharge is a beneficial use for future shortage protection.

Response: The revised transfer policy does not adopt an “immediate need” analysis to the exclusion of other considerations. Under both the current and revised Decision Guidelines, keeping the allocation available to the original service area, third party impacts to groundwater supplies, direct and near-term use, and existing and future demands are considered, among other factors (see Response to Comment 6 above). Furthermore, these guidelines are not inconsistent with the State’s position regarding its use of its 2.8 maf apportionment of the Colorado River. That position is based on considerations that are distinct from the Director’s recommendations to the Secretary regarding proposed transfers of CAP M&I subcontract allocations within the CAWCD service area.

Comment 10: The transfer policy should not consider annual recharge and recovery using a Groundwater Savings Facility (GSF) because a GSF may not be available on a consistent, long-term basis.

Response: When evaluating a proposed transfer action, the Department evaluates the recipient’s water use plan including the hydrologic impact of the plan and its ability to pay all costs associated with CAP water use. If a recipient’s long-term plan is to annually store and recover water using a GSF, the recipient will be required to demonstrate how this will be accomplished in years when the GSF may not be available.

Comment 11: The language of the third priority should be clarified so that adverse impacts from groundwater withdrawals that would have occurred regardless of the transfer do not qualify.

Response: The Water Management Objectives (Section II) and Decision Guideline number 3 of the revised transfer policy indicate that adverse impacts must be the result of the transfer of a CAP subcontract entitlement. The Department added corresponding language to the Review Criteria in Section III.B. of the revised transfer policy.

Comment 12: Rural Arizona water providers should not be precluded by general policy from CAP transfer and reallocation considerations.

Response: The 1996 CAP M&I Transfer Policy and the proposed revision are substantive policy statements that address the process for cooperating with, conferring with and obtaining the advice of the Director as required under state law when an M&I subcontractor proposes to transfer a CAP subcontract entitlement. Both the existing and proposed revisions to the CAP M&I Transfer Policy are limited to proposed transfers of CAP M&I non-Indian subcontract entitlements for entities located within the CAWCD service area. Initially, the Department made CAP allocation recommendations for entities located both inside and outside of the CAWCD service area. As indicated on page 1 of the 1996 CAP M&I Transfer Policy, a Department letter dated June 23, 1993 governs transfers involving subcontractors with service areas outside of the three-county CAWCD service area. These transfers involve entities to which CAP water could not be directly delivered, but which were authorized to exchange their allocations with other communities pursuant to the Colorado River Basin Project Act of 1968, 43 U.S.C. § 1524(d) (Section 3004(d)). Because these communities were unable to effect exchanges, these communities transferred their CAP allocations to other entities under a process separate from the 1996 CAP M&I Transfer Policy.

Comment 13: The transfer policy should be consistent with other policies already adopted by the Department that address the original allocation of CAP M&I supplies and the 1999 M&I reallocation.

Response: The proposed revision is a clarification of the Department's CAP M&I Transfer Policy that was adopted in 1996. As stated in the policy, it is consistent with the Director's original allocation recommendation concerning CAP M&I supplies. Although there was an allocation methodology for both the original allocation and the 1999 reallocation, there were no comparable substantive policy statements that were adopted for either allocation process.

Comment 14: The revised transfer policy will impact the future Indian Water Settlement Act non-Indian Agricultural (NIA) water reallocation process.

Response: The revised CAP M&I Transfer Policy applies to transfers of CAP M&I subcontract entitlements within the CAWCD service area, and is not designed to address the future NIA reallocation authorized by the Arizona Water Settlement Act. The Department has received several letters of interest from water providers concerning the future NIA reallocation process, which is expected to be highly competitive with unique issues that have not been considered in previous CAP allocation actions.

Comment 15: A more extensive public review process is needed before the revision of the 1996 CAP M&I Transfer Policy is finalized.

Response: The Department has provided opportunities for the public to participate in the proposed revisions to the 1996 CAP M&I Transfer Policy. In October 2005, the Department sent a notice to all CAP M&I subcontractors and other interested parties regarding an upcoming public meeting and the comment process. In November 2005, the Department held a public meeting in which interested parties had the opportunity to provide oral comments. Three parties offered comments at that time. Subsequent to the meeting, the Department provided a one-month period for the submittal of written comments. Nine parties provided written comments, including the three parties that had previously provided oral comments. Because the Department has already provided stakeholders with opportunities to provide comments, and because the proposed revisions are intended to clarify rather than change the existing policy, the Department does not believe that a more extensive public input process is necessary at this time.